



Contents lists available at ScienceDirect

Journal of Forensic and Legal Medicine

journal homepage: www.elsevier.com/jflm



Original Communication

What is legal medicine – Are legal and forensic medicine the same?

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ARTICLE INFO

Article history:

Received 11 February 2009

Received in revised form 20 July 2009

Accepted 9 September 2009

Available online 20 November 2009

Keywords:

Legal medicine

Forensic medicine

Comparison

Definition

ABSTRACT

Some consider the terms “forensic” and “legal” medicine to be synonymous but this is counter to the title of the Faculty of Forensic and Legal Medicine or the dual strands for progression to fellowship of the Australian College of Legal Medicine. The paper examines a very brief historical background to legal medicine and develops a definition of the strands thereof, namely legal and forensic medicine. It demonstrates that the two are different components of the application of medical knowledge upon the legal system. Legal medicine has greater relevance to civil and tort law, impacting upon patient care, whereas forensic medicine relates to criminal law and damage to, or by, patients.

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1. Introduction

Considering the definition of legal medicine and its relationship to forensics science, Wecht wrote¹:

“... Forensic science is a broader term than legal medicine. The former actually encompasses the latter... Legal medicine is considered to be the fields of study and accumulation of materials that deals with the application of medical knowledge to the administration of justice...” (At 245)

He considered the terms ‘forensic medicine’ and ‘legal medicine’ to be synonymous. This synergy between legal and forensic medicine provided the foundation for the creation of the Australian College of Legal Medicine (ACLM) more than a decade ago. More recently, the Faculty of Forensic and Legal Medicine (FFLM) of the Royal College of Physicians (RCP) adopted a similar philosophical interpretation of the relationship between forensic and legal medicine, recognising that they went hand in glove and hence incorporating both within the name of the faculty, thereby clearly recognising that the two were not synonymous but were synergistic. The ACLM also accepted that there was a fundamental difference between the two but that both constituted components of what he is legal medicine and provided for two parallel streams by which to achieve full fellowship. Either formal training in forensic medicine, coupled with appropriate employment, or alterna-

tively formal legal training together with medical qualifications and suitable experience, were considered appropriate pathways to satisfy the College’s requirements for fellowship.

Hoskins² also opposed the concept of synonymy between forensic and legal medicine, intimating that forensic medicine was easily definable as a medical specialty while he considered legal medicine to be too disparate to warrant specialty recognition. His suggestion was that legal medicine incorporated too many diverse areas in clinical medicine, such as the variety of medical specialties (as is covered by Colleges of Physicians), the range of surgeons (with their own Colleges), reproductive medicine (with the various Colleges of Obstetrics and Gynaecology) and so forth. Such argument lacks credibility if one focuses on just one of the colleges, such as the Colleges of Physicians (for example the Royal College of Physicians or the Royal Australasian College of Physicians), which issue specialist qualifications in medicine, identified as FRCP or FRACP.

These fellowships, be they FRACP or FRCP, are the same for allergists, pulmonologists, cardiologists, nephrologist, neurologists, rheumatologist, immunologists, gastroenterologists or specialists in infectious diseases, to name but a few of the specialties which use these post-nominals to reflect specialist standing. Each of these individual specialty disciplines would consider themselves specialty areas in their own right yet the overall specialty consideration is that of specialist/consultant physician. Surely this demonstrates the disparate state within other specialty colleges and the same would apply to surgeons and the range of other specialty areas within clinical medicine.

What follows is a discussion of what constitutes the specialty of legal medicine as contrasted and compare it with forensic

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medicine. The two remaining interdependent and so interwoven as to combine to create a composite specialty area known as 'legal medicine' which relies on the two separate strands to make the whole.

2. Historical backdrop

The concept of legal medicine is not novel and is found in the Code of Hammurabi dating back to 2200 BCE.³ The Code even incorporated issues concerning malpractice and concepts of civil and criminal liability resulting from inappropriate medical management.¹ Penalties were set out, ranging from financial compensation to a surgeon subjected to having his hand amputated.¹ Criteria upon which a purchase slave could be deemed defective are also outlined in the Code, an example of which was pre-existing epilepsy.⁴

Whether it be: Chinese culture of 3000 BCE; ancient Persian classification of wounds; old Greek laws prohibiting abortion; Roman laws of 600 BCE demanding what is now termed a Caesarean section to save the child if the mother were to die during confinement; or Hippocratean discussion of medico-legal issues in ~460 BCE – legal medicine has been practiced throughout the ages.¹ The role of the legal medicine expert witness was acknowledged in the Justinian Code in Rome in the sixth century AD.¹

The purpose of this discussion has been to confirm that legal medicine has been an integral, yet specialised, component of medical practice for as long as medicine has been practiced. Further discussion of the history of legal medicine will not enhance the search for an appropriate definition nor will it improve the appreciation of the differentiation between legal medicine and forensic medicine.

3. Developing a definition

One of the aspects which differentiates legal medicine, from forensic medicine, is that forensic medicine seems to have greater relevance to the application of medical knowledge when interpreting legal issues relevant to crime. This includes such medical interpretation as wound analysis, toxicology, assessment of sexual assault, collection of DNA, victim identification and medical aspects of crime scene evaluation.

Legal medicine has greater relevance to the delivery of health care to patients. It provides the filter that decides what is acceptable when applying community standards in such areas as patient rights, ethics, research, quality assurance, risk management or malpractice.

In the same way as forensic medicine exerts its maximal influence within the arena of criminal law so does legal medicine impose its major impact within the domain of tort law within the common-law legal system.

The areas in which legal, as contrasted to forensic, medicine comes into its own are those domains which deal with: the application of legislation to medical practice; professional duties and responsibilities; issues relevant to informed consent; supervision of medical care afforded to minors and those incapable of deciding for themselves; medical liability and neglect; and consideration of standards of fitness to practice within the health professions.

What must be appreciated from this appraisal is that the same principles apply irrespective of what other specialty medical discipline is involved within the domain under scrutiny. This clearly rebuts the hypothesis that legal medicine cannot be a specialty area because it encompasses so many other subspecialty disciplines encompassed within the broad rubric of medicine. The overarching principles are relevant to all medical care yet they still dictate the demand for specialist knowledge, within medicine, that transcends

pure legal training. It is inappropriate to assume that legal knowledge, devoid of medical experience, is sufficient to ensure optimal fairness for all concerned within the delivery of health care.

From the above it should be apparent that legal medicine represents far more than simply the furnishing of a medico-legal report. It offers the internal control mechanisms with inherent checks and balances to ensure that the standards of healthcare satisfy societal expectations and legal requirements, as may be interpreted by those with an intimate knowledge of the practice of medicine.

4. Specific examples of legal medicine

While developing the above hypothesis, designed to generate a definition of legal medicine, the discussion focused upon broad concepts without offering any specific examples in which the impact of legal medicine was amplified. What must follow is an examination of these broader principles, by a review of specific examples, to validate the assumptions upon which this hypothesis was built.

The need to better define legal medicine, such that it achieves wider acceptance, has been recognised for some time.¹ One of the areas that is both topical and reflects the need to foster legal medicine debate is the area of consideration and physician assisted death. The *Washington Death with Dignity Act* effective on March 4, 2009, permits doctors to provide patients with the wherewithal for suicide (as compared with euthanasia).⁵ This means that two states in the USA will allow what is already available in Belgium, the Netherlands and Switzerland but the fact that lawyers allow it does not translate into doctors being compelled to do what they might otherwise not approve.

The question of abortion resurfaced during the US elections in November 2008. The states of Colorado, California and South Dakota defeated laws designed to legislate against abortions.⁶ What is little known is the Draconian law that remains valid in South Dakota, which stipulates the meticulous and almost intimidating discussion that is supposed to precede abortion.⁶ Clearly this is a facet in which legal medicine becomes highly relevant and should have a significant role to play in the delivery of health care.

The interface between doctors and the pharmaceutical industry is a major concern for many within society, with doctors accused of being 'lapdogs' of big Pharma.^{7–9} There are now open demands for disclosure of industry payments to physicians.¹⁰ The imposition of local dictates that govern how doctors can relate to representatives of Pharma¹¹ reflects restrictions that can only be construed as elements of legal medicine without any reference to forensic medicine.

An area in which the relationship between legal and forensic medicine may become blurred is that of 'traffic medicine'. While forensic physicians may be involved in crash victim appraisal, perhaps looking at associated alcohol levels or toxicology,¹² legal medicine experts may be used to litigate and defend doctors consequent to third-party injuries caused by patients.¹³

Another topical issue is prisoner interrogation and the possible use of doctors as part thereof and hence as weapons of war to become actively involved in a process that is abhorrent to the rest of the profession. This flies in the face of established legal medicine principles, which place patient well-being as the paramount consideration. While military sources favour the use of doctors, especially psychiatrists, in prisoner interrogations, bodies such as the American Medical Association are openly opposed to it.¹⁴

Obviously the above examples have merely scratched the surface but suffice to claim that they demonstrate that legal medicine has a capacity to exert a major influence upon the delivery of medicine in areas that are often overlooked. What has been demonstrated is that the impact of legal medicine goes well beyond the

traditionally accepted provision of medico-legal reports. The examples provided remain relevant irrespective of the diverse array of potential clinical medical specialties for which legal medicine may play a pivotal role.

5. Possible definition

While “legal medicine” has been chosen as the umbrella concept to act as a flagship for the ACLM, it encompasses both ‘legal medicine’ and ‘forensic medicine’. ‘Legal medicine’ is a partner of forensic medicine within the interface of medicine and law and represents the specialty branch of medicine that deals specifically with the application of medical knowledge to clarify legal problems and assist in legal proceedings.

While the focus of forensic medicine is more directed to solutions that are relevant to criminal law in the role in which medical knowledge may influence legal interpretation, ‘legal medicine’ is a branch of medical knowledge with greater relevance to tort law within the common-law adversarial system.

Legal medicine reflects a more introspective analytical application of specialist knowledge which evaluate aspects of the delivery of health care involving such areas as privacy, ethics, conduct, research, risk management, quality control and the rights of patients and therapists. The greatest impact of legal medicine is upon the delivery of care to patients as compared with forensic medicine that focuses upon the damage caused to patients.

6. Conclusion

It has been suggested that the scope of legal medicine is too broad to allow the development of a determinate definition. Such criticism is addressed by an exploration of both the historical backdrop and examination of specific examples in which legal medicine provides an overarching yet defined influence.

Within this context, application of legal medicine principles transcends any other individual speciality to offer specific responses that define legal medicine in its own right.

Legal medicine represents the impact that medical knowledge has upon the interface of medicine and law and within this discourse legal and forensic medicine are not the same. They repre-

sent different facets of the same tapestry, depending upon which aspects of the law are to be assessed as a result of the application of specified medical knowledge.

Conflict of Interest

There is no conflict of interest.

Funding

None declared.

Ethical Approval

None declared.

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